

(10)
No. 95-6

Supreme Court, U.S.

FILED

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CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1995

NORFOLK & WESTERN RAILWAY COMPANY,
Petitioner,

v.

WILLIAM J. HILES,
Respondent.

On Writ of Certiorari to the
Appellate Court of Illinois,
Fifth Judicial District

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JUNE 30, 1995
CERTIORARI GRANTED SEPTEMBER 27, 1995

27 PP

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The appendix to the petition for certiorari contains the following material, which is omitted from the Joint Appendix:

Opinion of the Appellate Court of Illinois, Fifth District	Pet. App. 1a
Written Order of the Illinois Supreme Court Denying Petition for Leave to Appeal	Pet. App. 8a
Judgment and Jury Verdict in the Circuit Court, Third Judicial Circuit, Madison County, Illinois	Pet. App. 9a

**CIRCUIT COURT, THIRD JUDICIAL CIRCUIT,
MADISON COUNTY, ILLINOIS**

RELEVANT DOCKET ENTRIES

Date	PROCEEDINGS
05/20/93	DEFENDANT'S MOTION FOR SUMMARY JUDGMENT and MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
05/20/93	PLAINTIFF'S MOTION FOR A DIRECTED VERDICT
05/20/93	DEFENDANT'S MOTION FOR DIRECTED VERDICT AT THE CLOSE OF THE EVIDENCE
06/21/93	DEFENDANT'S POST TRIAL MOTION
07/19/93	DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF POST-TRIAL MOTION
11/19/93	DEFENDANT'S NOTICE OF APPEAL

**APPELLATE COURT OF ILLINOIS,
FIFTH DISTRICT**

RELEVANT DOCKET ENTRIES

Date	PROCEEDINGS
11/24/93	CIVIL NOTICE OF APPEAL
02/25/94	APPELLANT BRIEF
07/01/94	APPELLEE BRIEF
07/15/94	APPELLANT REPLY BRIEF
12/29/94	Opinion (affirming judgment of Circuit Court, Third Judicial Circuit, Madison County, Illinois)
01/13/95	APPELLANT'S AFFIDAVIT OF INTENT
02/02/95	MANDATE STAYED

ILLINOIS SUPREME COURT

RELEVANT DOCKET ENTRIES

Date	PROCEEDINGS
02/02/95	PETITION FOR LEAVE TO APPEAL
04/05/95	DENIAL OF PETITION FOR LEAVE TO AP- PEAL

[Filed Dec. 26, 1991]

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

No. 91-L-1605

WILLIAM J. HILES,
Plaintiff,
vs.

NORFOLK AND WESTERN RAILWAY COMPANY,
a corporation,
Defendant.

COMPLAINT

Comes now the Plaintiff, WILLIAM J. HILES, by his attorneys, CALLIS LAW FIRM, and for his cause of action against the Defendant, NORFOLK AND WESTERN RAILWAY COMPANY, a corporation, states:

1. That on or about the 18th day of July, 1990, and at all times herein mentioned, the Defendant, NORFOLK AND WESTERN RAILWAY COMPANY, was a corporation, organized and existing as a common carrier by rail in and throughout several states of the United States and for the purpose thereof did own, possess, operate and maintain divers railroad cars, tracks and other equipment in and about Madison County, Illinois.

2. That at all times herein mentioned, Plaintiff, WILLIAM J. HILES, was employed by the Defendant as a yardman, in the furtherance of interstate commerce and brings this action pursuant to the authority of Title 45, Section 1, et seq. of the United States Code, commonly referred to as the Safety Appliance Act.

3. That on July 18, 1990, the plaintiff, WILLIAM J. HILES, was working as a member of a switching crew located at Defendant's St. Louis Yard, at or near St. Louis, Missouri. At that time, in the course and scope of his duties, he was required to go between two railroad cars to straighten a misaligned draw bar and was injured attempting to "straighten" said drawbar, all in violation in whole or in part of the aforesaid Safety Appliance Act.

4. That as a result in whole or in part of the foregoing violation of said Safety Appliance Act, Plaintiff, WILLIAM J. HILES, was severely and permanently injured in that his back, and the bones, muscles, tissues, discs and nerves thereof were severely bruised, contused, lacerated, ruptured and made sore; and that he has suffered and will continue to suffer great bodily pain; and he has lost and will continue to lose large sums of money which he otherwise would have earned; that his earning capacity has been permanently impaired; and that he has spent large sums of money endeavoring to be cured of his injuries all to his damage in an amount in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

WHEREFORE, Plaintiff, WILLIAM J. HILES, prays judgment against the Defendant, NORFOLK AND WESTERN RAILWAY COMPANY, a corporation, in an amount in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00) and costs of suit.

CALLIS LAW FIRM

By /s/ Lance Callis
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Attorney for Plaintiff

[Filed Jun. 18, 1992]

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

(Title Omitted in Printing)

ANSWER AND JURY DEMAND

Defendant, Norfolk and Western Railway Company, by its attorneys, Thompson & Mitchell, for its answer to plaintiff's complaint, states as follows:

1. Defendant admits the allegations of paragraph 1.
2. Defendant admits that William Hiles was an employee of defendant. Defendant also admits the existence of the Safety Appliance Act. Defendant denies the remaining allegations of paragraph 2 and further denies that the Safety Appliance Act applies to plaintiff's claim.
3. Defendant denies the allegations of paragraph 3.
4. Defendant denies the allegations of paragraph 4 and further denies that plaintiff was injured in the nature or to the extent claimed.

By way of affirmative defenses, defendant states that plaintiff committed acts or omissions of contributory negligence all in mitigation of any damages claimed. Defendant further states that plaintiff's acts or omissions of contributory negligence were in excess of 50% in bar of plaintiff's claim.

Defendant further states that plaintiff has failed to mitigate his damages.

Defendant further states that all or part of plaintiff's condition is a result of a preexisting condition for which this defendant is not responsible.

**DEFENDANT DEMANDS
TRIAL BY JURY.**

THOMPSON & MITCHELL

/s/ Thomas W. Alvey
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(Certificate of Service Omitted in Printing)

[Filed May 20, 1993]

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

(Title Omitted in Printing)

AMENDED ANSWER

Defendant, Norfolk and Western Railway Company, by its attorneys, Thompson & Mitchell, for its amended answer to plaintiff's complaint, states as follows:

1. Defendant admits the allegations of paragraph 1.
2. Defendant admits that William Hiles was an employee of defendant. Defendant also admits the existence of the Safety Appliance Act. Defendant denies the remaining allegations of paragraph 2 and further denies that the Safety Appliance Act applies to plaintiff's claim.
3. Defendant denies the allegations of paragraph 3.
4. Defendant denies the allegations of paragraph 4 and further denies that plaintiff was injured in the nature or to the extent claimed.

By way of affirmative defenses, defendant states that plaintiff committed acts or omissions of contributory negligence all in mitigation of any damages claimed. Defendant further states that plaintiff's acts or omissions of contributory negligence were in excess of 50% in bar of plaintiff's claim.

Defendant further states that plaintiff has failed to mitigate his damages.

Defendant further states that all or part of plaintiff's condition is a result of a preexisting condition for which this defendant is not responsible.

Defendant further states that plaintiff's claim that the drawbar or coupler was not aligned was a result of simple misalignment and not the result of defective equipment.

Defendant further states that the car in question was not in use and on its line.

**DEFENDANT DEMANDS
TRIAL BY JURY.**

THOMPSON & MITCHELL

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(Certificate of Service Omitted in Printing)

[Filed May 20, 1993]

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

(Title Omitted in Printing)

**AFFIDAVIT OF WALTER A. MILLER, JR.
IN SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Walter A. Miller, Jr., after first being duly sworn, on his oath says and deposes:

1. I have been employed by Norfolk Southern Corporation for the past 20 years. I am currently a General Foreman and have been employed in that capacity for the past 10 years. As General Foreman, I supervise the repair of railcars, the operation of railcars and perform examinations of railroad cars.

2. While acting in the capacity of General Foreman, I conducted an inspection on Railcar No. TTBX-966015 on July 18, 1990 at 5:40 a.m. in St. Louis, Missouri at Luther Yard Track No. 15. This railcar is a FA-Auto Rack which is an enclosed bi-level car equipped with racks for automobile transportation. The coupler at the "A" end of the railcar is known as a "longshank." The coupler was manufactured by CSF, type E69AE. The coupler on the "A" end was 32½" high with lateral play of 21". This car was properly equipped for interchange service and in good condition with no defects noted. A copy of my inspection report is attached and incorporated in this affidavit.

3. Norfolk Southern Corporation has been a member of the Association of American Railroads (hereinafter

AAR) for the entire duration of my employment, including July 18, 1990.

4. The AAR publishes a Field Manual of the AAR Interchange Rules.

5. In my capacity as a General Foreman for Norfolk Southern Corporation, I keep a copy of the AAR Interchange Rules in order to supervise compliance. The Interchange Rules apply to all railcars intended for interchange service. The AAR Interchange Rules, set out coupler types and conditions which are permissible to use on interchange lines to insure compatibility with other interchange cars and safety. A copy of the applicable AAR Interchange Rules are attached and incorporated into this affidavit.

6. On July 18, 1990 at approximately 4:00 a. m., William J. Hiles claims an injury while aligning a coupler on the A-end Coupler of Railcar No. TTBX-966015.

7. Car No. TTBX-966015 coupler on the "A" end, based upon the measurements and inspection made on July 18, 1990, meets the AAR guidelines published in the Interchange Rules.

8. The subject coupler on the A end of Railcar TTBX-966015, on July 18, 1990, was not defective and within the standards and rules outlined by the AAR.

9. If called to testify in this matter with regard to the quality of the subject drawbar and coupler in the above litigation, I would rely upon information obtained in my examination and my personal experience and knowledge gained throughout my career. My testimony, if called at trial, would be consistent with all facts herein.

FURTHER AFFIANT SAYETH NOT.

/s/ Walter A. Miller, Jr.
WALTER A. MILLER, JR.

(Notary Omitted in Printing)

IN THE CIRCUIT COURT,
THIRD JUDICIAL CIRCUIT,
MADISON COUNTY, ILLINOIS

EXCERPT FROM OPENING ARGUMENT
BY THE DEFENSE

(May 19, 1993)

* * * *

[20] [BY MR. ALVEY:]

* * * And on this case, on this day Mr. Hiles was working with an engineer and another switchman, Larry Fauver—who will be here during the course of Lance's opening statement—and what they were doing that night was working in the Luther Yard, it was about 4 a.m., and what they were doing was making up trains in the Luther Yard, putting the cars together. And they came upon this one car where the drawbar on the car was screwed or turned over in one direction, and it became obvious to the two men that with the drawbar in that position when the cars came together the drawbars would miss and so the cars would not be connected or coupled up. So the two men, Bill Hiles and Larry Fauver went between the rails of the cars, there was a distance, there was a gap there, and they went between the cars, and Mr. Fauver got on one side of the drawbar and Mr. Hiles got on the other side of the drawbar, there were two men in there, and one pushed with his back and the other one pulled and lined up this drawbar, and it was during this period of time that Mr. Hiles felt pain in his back, and thereafter was—as Lance indicated—he was taken to Barnes Hosital. He went back to the yard office and was taken to Barnes Hospital. But basically those are the facts of how the accident occurred.

* * * *

EXCERPTS FROM TESTIMONY OF LARRY FAUVER

(May 19, 1993)

* * * *

[37] BY MR. JENSEN:

Q. State your name for the record please.

A. Larry Fauver.

* * * *

[38] A. I'm a switchman on Norfolk Southern Railroad.

* * * *

[43] Q. Approximately—let's have you step up here and tell us that at about 4:00 in the morning where were you working?

A. On this lead right here, where you see these railroad cars, and I was standing here pulling the pins on the cars, and we were switching these cars in these various tracks right here.

Q. And if I can have you stay here one moment please. Now, you've explained that you're changing the pins on the cars and changing cars. Were you working on a particular car at that time, about 4:00?

A. A particular—

Q. Did you have a problem in the—did you have a problem with a particular rail car?

A. Yes.

* * * *

[44] Q. * * * Mr. Fauver, this picture was produced by the Norfolk and Western and Southern Railroad as the car. Do you recognize this picture?

A. I imagine that's the car.

Q. What type of car is that?

A. That's an auto wreck car that carries automobiles in it.

Q. Approximately how long is that car?

A. 889 feet long.

Q. How much does it weigh?

A. About 30 or 35 tons.

Q. How are cars coupled together?

A. Well, you can either shove—you can shove a car down and couple the coupling together or kick the car into the track and coupling.

Q. When you say "shove a car", the engine would come and physically ram another car and they will automatically couple?

A. Yes.

Q. Did the cars automatically couple on July 18th?

A. This car couldn't couple unless you slued the drawbar over and straightened it out. The drawbars have to be straight to couple.

* * * *

[45] Q. How far does—how long is the drawbar from the point of the coupler all the way underneath the car?

A. I guess it goes back in here four feet maybe. It goes way back in here, and it will slue all the way from this point to that point.

Q. So the drawbar would move forward and backward?

A. Yeah. Well, left and right.

Q. And left and right?

* * * *

Q. So the drawbar would move to the left and right. And what's the purpose of the movement?

A. When the train is actually going down the track going around a curve and that the drawbar will slue.

Q. Would you explain to the jury what the front portion of the drawbar is?

A. This is where they coupled together. This is the knuckle that opens up.

[46] Q. When the cars couple together, do the knuckles then engage?

A. This one is open and then two couples come together and they close on each other like this, and it drops this pin so it can't be opened up.

Q. How much does a coupler or knuckle weigh?

A. Just this knuckle right here that comes out with this pin is quite a thing to carry. To carry one even the length of a car is really heavy. I believe this drawbar weighs about 700 pounds.

Q. And the knuckle?

A. I'm not an expert, but you can't pick it up.

* * * *

Q. You've indicated the drawbar was slued to one side. Do you recall which side it was slued to?

A. It was slued to this side here.

* * * *

[47] Q. And was it your job and Mr. Hiles' job to couple that car to the train?

A. Yes.

Q. Now, when you noticed the drawbar was slued, what did you and Mr. Hiles do?

A. We walked over there to slue it to the center position so that it could couple, because I was going to kick another car in there on top of that one. It has to be in the middle. If it's over to the side they'll hit.

Q. How were you going to move it into the middle position?

A. I was going to move it with my body. I like to put my back to it and shove it back myself rather than push it over. It's kind of difficult pushing it to the center.

Q. Have you been taught how to do that by the railroad?

A. No. I mean, I've had switchmen show me how to do it. You can either shove it over or with your back to it or twist it to the center.

Q. Were you going to do this by yourself?

A. Sometimes I do.

Q. On this occasion?

A. On this occasion Bill and I were going to both [48] shove it over.

Q. So you turned with your back towards the drawbar and you began pushing. What position did Mr. Hiles take?

A. He was on the other side pulling on it.

Q. What happened as you were pushing and he was pulling?

A. Well, I shoved it over, and I turned around and Mr. Hiles was on his knees and complaining that he was hurt.

Q. Did it shove easily?

A. No.

Q. Were you in between the cars at that time?

A. Well, the other car was down the track four or five car lengths away. I mean, he wasn't close, but I was in between those two cars.

Q. Was Mr. Hiles likewise in between the rails?

A. Yes.

* * *

[52] [BY MR. ALVEY:]

Q. When the cars go around a curve in a train, did I understand you to say this drawbar would move from side to side, depending on the direction of the curve?

A. Right.

Q. That's correct, isn't it?

A. Yes.

* * *

Q. * * * When the car is uncoupled when the car is on a curve, does the drawbar automatically come back?

A. Not on most cars.

* * *

EXCERPTS FROM TESTIMONY OF WILLIAM HILES

(May 19, 1993)

* * *

[144] BY MR. JENSEN:

Q. State your name please.

A. William Hiles.

* * *

[160] Q. And would you tell us what happened at that time from the time that you first came up to that car and noticed it would not couple?

A. Well, the drawbar that was connected together was crooked, and Mr. Fauver was on one side and I was on the other and we attempted to straighten it.

Q. How do you straighten the drawbar?

A. He was pushing and I was pulling.

Q. Had you been taught by the Norfolk and Western proper procedures and had gone to seminars on drawbars and straightening drawbars?

A. We had instructions.

Q. Were you following all the proper procedures?

A. I believe I was.

Q. Where were you standing at this time?

A. I was standing just next to the drawbar with my feet somewhat spread apart.

Q. In between the rails?

A. In between the track, the rails, that's right.

Q. Was Mr. Fauver also in between the rails?

A. He was.

Q. Were the two of you in between the car couplings?

[161] A. That's correct.

Q. What happened then as you attempted to straighten that drawbar?

A. Well, I was pulling on it as hard as I could. There was a lot of times we did that. I got a sharp pain in my back, my lower back, and I couldn't stand. I went down and went to my knees.

* * *

[189] [BY MR. ALVEY:]

Q. Then in July of 1990 at about 4:30 in the morning you were out in the Luther Yard and you were performing the basic general duties of a switchman, is that right?

A. That's correct.

Q. And part of the duty of a switchman are to line up drawbars, is that right?

A. That's correct.

* * * *

Q. So you'd been doing that type of job for basically 26 years?

A. That's right, that's correct.

Q. And had you done that type of job solely by yourself before without any assistance lining up a drawbar?

A. Oh, yes.

[190] Q. Okay. On this occasion when you and Mr. Fauver were out there there were two of you lining up the drawbar. is that right?

A. Yes, we were.

Q. And you were both between the rails?

A. Yes.

Q. And you were pushing or pulling?

A. Pulling.

Q. And you felt this pain in your back?

A. Yes.

* * * *

**DEFENDANT FILING AMENDED ANSWER AND
DENIAL OF DEFENDANT'S MOTION
FOR DIRECTED VERDICT**

(May 20, 1993)

* * * *

[248] MR. ALVEY: Your Honor, the defendant has prepared and is now filing a copy of the motion for leave to amend the answer and an amended answer, and I will tell the Court basically what that pleading does. We have an issue in this case with regard to the Safety Appliance Act, and it is basically the defendant's position that the plaintiff must prove more with regard to the accident than the fact that he went between the rails and he was injured attempting to climb up the drawbar. It's basically our position that—

THE COURT: I think I'm familiar with the position and I think I've already ruled on it, and the rulings will stay consistent and you don't need to repeat it.

MR. ALVEY: Okay. The purpose of this answer, if there is any question with regard to whether or not the proving of a defect is an affirmative defense under the interpretation [249] of the Safety Appliance Act, all this pleading does is simply to assert the defect as an affirmative defense. It does nothing more than that. And as I've indicated before we will make an offer of proof with regard to the defect.

* * * *

MR. ALVEY: Your Honor, the plaintiff has rested, and when we began the trial we filed a Motion for Summary Judgment and affidavits in support thereof on the single count, the Safety Appliance Act count. At this point in time the defendant has filed a Motion for Directed Verdict at the conclusion of the plaintiff's case and in support of our Motion for Directed Verdict we would assert the matters set forth in our Motion for Summary Judgment and the affidavit [250] attached thereto, and it is my understanding that the Court has given us

leave to make an offer of proof with Mr. W. A. Miller later on today, that will relate to the mechanic condition of the coupler device, but at this point we are presenting our motion for directed verdict at the conclusion of the plaintiff's case.

THE COURT: The motion is denied.

* * * *

**DEFENDANTS OFFER OF PROOF,
TESTIMONY OF WALTER MILLER**

(May 20, 1993)

* * * *

[298] **MR. ALVEY:** Let the record show that this is a hearing held out of the presence of the jury. The parties are present, the Court is present.

[299] **Q.** Sir, would you state your full name for the record please?

A. Walter A. Miller, Jr.

Q. And would you tell the Court your occupation?

A. I'm a general foreman with Norfolk and Southern Corporation here in St. Louis.

Q. And how long have you had that capacity?

A. I have been a general foreman with Norfolk and Southern for ten years.

Q. I hand you what has been marked as Defendant's Exhibit Number 6 which purports to be an affidavit executed by yourself and several exhibits to that affidavit. Are you familiar with that, sir?

A. Yes, sir.

Q. Are the matters stated therein true and correct to the best of your information and belief?

A. Yes, sir, it is.

Q. Did you in fact inspect the drawbar and coupler on the car involved in the injury of William J. Hiles?

A. Yes, sir, I did.

Q. And as part of the affidavit is there a copy of your inspection report?

A. Yes, sir, there is.

Q. Are you generally familiar with the rules and [300] regulations in the railroad industry that governs the design and operation of drawbars and coupling devices?

A. Yes, sir, I am.

Q. As a result of your inspection did you find any type of mechanical defect in the drawbar of the coupling device on the particular car involved?

A. No, sir, I didn't.

* * * *

**GRANT OF PLAINTIFF'S MOTION
FOR DIRECTED VERDICT**

(May 20, 1993)

* * * *

[300] THE COURT: This is a motion for a directed verdict [301] which has been filed. What say the defendant?

MR. REITZ: We oppose the motion for directed verdict. The motion for directed verdict cites the *Buskirk* opinion and generally states that—alleges that the workman need only prove that he went between the cars after they failed to automatically couple and he was injured while aliging a misaligned drawbar.

It's our position, first of all, that *Buskirk* is not the law under the FELA, that the United States Supreme Court in *Affolder* cited in our Motion for Summary Judgment Fourth Circuit Court, in *Reed* and the *Maldonado* case states the proper position, and that is the mere failure—

THE COURT: I understand your position, but I guess where I am right now is based on my previous ruling and assuming that I adhere to that, which I now do, then there is no reason why the motion for summary—Motion for Directed Verdict should not be granted, because there is no dispute as to the facts that I understand, none whatsoever. I mean, based on my previous ruling it seems to me that the motion for directed verdict has to be granted.

MR. REITZ: We oppose it for all the reasons previously stated and the testimony of Mr. Miller saying there is no defect.

THE COURT: So the motion for directed verdict is [302] granted.

MR. ALVEY: For the record, Judge, in our Counter Motion for Summary Judgment—

THE COURT: Is denied.

MR. ALVEY: Denied.

* * * *

**DENIAL OF DEFENDANTS MOTION FOR DIRECTED
VERDICT AND MOTION FOR SUMMARY JUDGMENT**

(May 21, 1993)

* * * *

[316] MR. ALVEY: At the conclusion of all of the evidence the defendant renews the motion for directed verdict, motion for summary judgment as previously filed on the Safety Appliance Act issues.

THE COURT: Those motions are again denied.

* * * *

**DEFENDANT'S OFFER OF PROOF
EXCERPTS FROM TESTIMONY OF LARRY FAUVER**

(May 21, 1993)

* * * *

[325] MR. ALVEY: Mr. Favre, would you please identify yourself for the record please?

A. Larry Fauver.

* * * *

[326] Q. * * * Sir, you were working with Mr. Hiles at the time of his accident, is that correct?

A. That's right, I was.

Q. Were you the employee of the N & W which uncoupled the car upon which Mr. Hiles was injured—

A. Yes.

Q. —shortly before his injury?

A. Yes, I uncoupled that.

Q. At the time you uncoupled the car and released the knuckle, was the drawbar slued at that time?

A. Yes, sir, it was.

* * * *

MR. REITZ: * * * [327] it is our position, shows that the drawbar in question, there is no evidence of a defect both by plaintiff's own testimony, the affidavit, the evidence we presented that the drawbar in question was pulled on a curve or slope, that's the evidence we will propose to provide here through our offer of proof and further evidence if we were allowed to provide it, and that's in line with the *Affolder*, *Reed* and *Maldonado* opinions.

THE COURT: The offer of proof will be so noted.

* * * *

DIRECTION OF VERDICT ON LIABILITY TO THE JURY

(May 21, 1993)

* * * *

[329] THE COURT: * * *

Prior to the time of the final argument I have one announcement to make to the jury. The Court after hearing the evidence in this case has directed a verdict in favor of the plaintiff William Hiles and against the defendant Norfolk and Western Railway Company on the issue of liability, therefore, you will have no need to consider that issue in your deliberations.

* * * *